

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

RITA FLOYD,

Plaintiff,

v.

No. CV 10-0808 RB/KBM

STATE OF CALIFORNIA
DEPARTMENT OF EXTRADITION,

Defendant.

MEMORANDUM OPINION AND ORDER

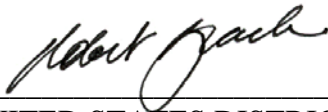
This matter is before the Court, *sua sponte* under 28 U.S.C. § 2254 R. 4 or, alternatively under Fed. R. Civ. P. 12(b)(6), and 28 U.S.C. § 1915, on Plaintiff's "Order To Vacate And Rescind Extradition." The Court construes the pleading as a petition for an order preventing California authorities from extraditing Plaintiff or, alternatively, for a writ of habeas corpus to prevent New Mexico authorities from complying with California's anticipated request for extradition. *See Ketcher v. Fields*, No. 95-6393, 1996 WL 528363, at *2 (10th Cir. Sept. 18, 1996) (citing *Gee v. State of Kansas*, 912 F.2d 414, 416 (10th Cir. 1990)). The Court will dismiss claims against Defendant State of California Department of Extradition without prejudice. *Cf. Pfaff v. Wells*, 648 F.2d 689, 693 (10th Cir. 1981); *Trujillo v. Williams*, 465 F.3d 1210, 1223 n. 16 (10th Cir. 2006). The New Mexico Attorney General will be substituted as the Respondent, and Plaintiff will be referred to as Petitioner.

IT IS THEREFORE ORDERED that Petitioner's claims against Defendant State of California Department of Extradition are DISMISSED without prejudice to her right to pursue those

claims in an appropriate jurisdiction, and the Clerk is directed to substitute New Mexico Attorney General Gary King as the named Respondent;

IT IS FURTHER ORDERED that Respondent shall answer said petition within ten (10) days from the date of entry of this Order. Respondent's answer shall advise, but is not limited to, whether Petitioner has exhausted her state court remedies, if required for the issues raised in the federal application. In each case, Respondent shall attach to its answer copies of any pleading pertinent to the issue of exhaustion which was filed by Petitioner in the state district court, the state court of appeals, and the state supreme court, together with copies of all memoranda filed by both parties in support of or in response to those pleadings. Respondent shall also attach to the answer copies of all state court findings and conclusions, docketing statements and opinions issued in Petitioner's state court proceedings. In the event Respondent denies exhaustion, Respondent shall identify the State procedures that are required and currently available to Petitioner given the nature of her claims and their procedural history.

IT IS FURTHER ORDERED that until such time as Petitioner may be represented by counsel the Clerk shall forward to Petitioner a copy of this Order and any subsequent orders, pleadings, and supporting papers filed in this proceeding.


UNITED STATES DISTRICT JUDGE